

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 304**

Introduced by Schrock, 38

Read first time January 11, 2005

Committee: Education

A BILL

1 FOR AN ACT relating to education; to amend section 77-3442, Revised  
2 Statutes Supplement, 2004; to adopt the Education  
3 Buildings Review Commission Act; to change provisions  
4 relating to a levy limitation; and to repeal the original  
5 section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 11 of this act shall be known  
2 and may be cited as the Education Buildings Review Commission Act.

3           Sec. 2. It is the policy of the Legislature to reduce  
4 property taxes through the use of levy limits. This policy  
5 requires political subdivisions to seek efficiencies which include  
6 cooperation with other agencies and political subdivisions in the  
7 use and construction of public buildings. In order to facilitate  
8 the policy of property tax reduction and consolidation or  
9 cooperation in the provision of public services, it is necessary  
10 for the state to exercise oversight over capital construction  
11 projects by school districts.

12           Sec. 3. For purposes of the Education Buildings Review  
13 Commission Act:

14           (1) Capital construction project means any capital  
15 construction project for new construction, renovation, expansion,  
16 or remodeling of public buildings which is financed through a bond  
17 issue, sinking fund appropriation, or long-term lease negotiated  
18 through a third party;

19           (2) Commission means the Education Buildings Review  
20 Commission;

21           (3) Department means the State Department of Education;

22           (4) Reviewable building project means any project for the  
23 construction of a building which has an estimated total cost of not  
24 less than five hundred thousand dollars or not less than ten  
25 percent of the total general fund expenditures of the school  
26 district or educational service unit in the most current year  
27 available, whichever is greater, and which is financed through a  
28 bond issue, a sinking fund appropriation, the use of the special

1 building fund authorized in subdivision (2)(a) of section 77-3442,  
2 or long-term lease negotiated through a third party. Reviewable  
3 building project does not include any capital construction project  
4 in support of a proprietary function if the project is to be  
5 financed primarily through grants, matching funds, or user fees  
6 paid for the services of the proprietary function; and

7 (5) Total general fund expenditures means all  
8 expenditures budgeted from all funds, except that money transferred  
9 between funds shall only be considered as budgeted expenditures  
10 from the fund from which the money is actually expended and not  
11 transferred.

12 Sec. 4. No school district shall commence a reviewable  
13 building project unless the reviewable building project has been  
14 approved by the commission pursuant to the Education Buildings  
15 Review Commission Act.

16 Sec. 5. (1) The Education Buildings Review Commission is  
17 created. The commission shall consist of the Commissioner of  
18 Education or his or her designee, three members appointed by the  
19 commissioner, and three members appointed by the Governor. The  
20 members appointed by the Governor shall have expertise and  
21 experience in public or private sector finance, analysis, or  
22 management. The appointed members of the commission shall serve  
23 for terms of four years, except that of the initial appointments,  
24 two members appointed by the commissioner and one member appointed  
25 by the Governor shall serve for terms of two years and one member  
26 appointed by the commissioner and two members appointed by the  
27 Governor shall serve for terms of four years, all as designated by  
28 the person appointing. As the terms of members expire, succeeding

1 appointments shall be made in the same manner as the original  
2 appointments are made and succeeding members shall have the same  
3 qualifications as their predecessors. A member appointed to fill a  
4 vacancy occurring other than by the expiration of a term shall be  
5 appointed for the unexpired term of the member vacating the  
6 position. No person may serve more than two consecutive four-year  
7 terms.

8 (2) The commission shall be within the department, and  
9 the department shall provide staff support and assistance for the  
10 commission. The Commissioner of Education shall serve as  
11 chairperson of the commission. The commission shall meet from time  
12 to time as directed by the chairperson, and members shall be  
13 reimbursed for their actual and necessary expenses as provided in  
14 sections 81-1174 to 81-1177.

15 (3) A member of the commission shall not participate in  
16 the review of or decision on any application which would involve a  
17 conflict of interest.

18 Sec. 6. The commission shall set standards for  
19 determining whether to approve or disapprove applications for  
20 reviewable building projects proposed by a school district based  
21 upon:

22 (1) Whether the applicant school district and the  
23 political subdivisions contiguous to the school district or having  
24 public buildings of the same type being proposed within fifteen  
25 miles of the reviewable building project have established strategic  
26 plans concerning the need for public buildings in that area, the  
27 feasible uses for the reviewable building project, and the  
28 population to be served by the reviewable building project;

1           (2) Whether the applicant school district has  
2 communicated with other political subdivisions contiguous to the  
3 district or having public buildings of the same type within fifteen  
4 miles of the reviewable building project concerning joint use of  
5 the reviewable building project, if feasible;

6           (3) Whether the reviewable building project will  
7 efficiently serve the residents of the geographical area;

8           (4) Whether the reviewable building project allows  
9 multiple use by different governmental entities, not-for-profit  
10 entities, or the general public;

11           (5) Whether there is a demonstrated need for the  
12 reviewable building project, including the condition of existing  
13 buildings of the district and the population to be served by the  
14 reviewable building project;

15           (6) Whether the reviewable building project has a  
16 long-term benefit for the geographical area based upon population  
17 projections, economic conditions of the area, and the strategic  
18 plans for public buildings for the area; and

19           (7) Whether the applicant school district demonstrates  
20 that the identified needs cannot be met by the use of alternative  
21 service delivery systems or technology in use at the time of  
22 application which can or may be adapted to serve such needs.

23           Sec. 7. A school district proposing a reviewable  
24 building project shall submit an application for approval to the  
25 commission. The application shall be on a form developed by the  
26 commission and shall be accompanied by the following documents and  
27 information:

28           (1) Copies of public notices of intent to construct the

1 reviewable building project described in the application, including  
2 copies of any notices sent to other political subdivisions which  
3 have boundaries contiguous to or overlapping the boundaries of the  
4 applicant school district;

5 (2) Any formal written responses provided to the  
6 applicant school district in response to the notices received prior  
7 to the filing of the application;

8 (3) Copies of any agreements for use or joint use of the  
9 reviewable building project which have been drafted and are pending  
10 at the time of the application, including agreements with other  
11 political subdivisions or private parties;

12 (4) A report examining the need and demand for public  
13 services which the reviewable building project will provide. The  
14 report shall (a) provide information on the physical condition and  
15 use of any facility which the reviewable building project would  
16 replace, including, but not limited to, any reports made by  
17 regulatory agencies, (b) describe any public facilities with  
18 similar uses which are located in political subdivisions with  
19 boundaries contiguous to or overlapping the boundaries of the  
20 applicant school district. Supportive endorsements or proposals  
21 from such political subdivisions may be included, and (c) examine  
22 the potential for alternative service delivery systems or  
23 technology in use at the time of application which is serving  
24 public or may be adapted to serve the same public needs;

25 (5) Documentation of the amount and role of private,  
26 federal, state, and local funding available to the reviewable  
27 building project and any potential impact of the reviewable  
28 building project on the type or amount of federal or state aid that

1 may be received; and

2 (6) Copies of any public documents describing any  
3 proposed or available debt or bond financing for the reviewable  
4 building project and any public reports provided by bond counsel or  
5 agent which are relevant to the applicant school district's credit  
6 rating for debt financing purposes.

7 Sec. 8. The applicant school district shall bear the  
8 burden of proving that the reviewable building project meets the  
9 criteria specified in section 6 of this act and rules and  
10 regulations of the commission. The commission shall conduct a  
11 public hearing on the application at which any interested person  
12 supporting or opposing the reviewable building project, or in a  
13 neutral capacity, may present oral or written testimony or evidence  
14 to the commission. The commission shall publish notice of the date  
15 and time of such hearing in a newspaper of general circulation in  
16 the geographical area of the educational service unit in which the  
17 applicant school district is located at least once each week for  
18 three consecutive weeks prior to the hearing, with the last notice  
19 to be published not less than seven days before the date set for  
20 hearing. The applicant school district may file an amended or  
21 substitute application at the hearing or at any time after the  
22 hearing and before the commission rules on the application. If the  
23 applicant school district files an amended or substitute  
24 application after the initial public hearing, the commission in its  
25 discretion may hold additional public hearings upon notice  
26 published as provided in this section for the initial public  
27 hearing.

28 Sec. 9. (1) The decision of the commission shall be

1 based upon the standards for review established pursuant to section  
2 6 of this act. If the commission finds that standards in such  
3 section have been met by the applicant school district, it shall  
4 approve the reviewable building project. If the commission finds  
5 that one or more standards have not been met, it may disapprove the  
6 reviewable building project or make recommendations for further  
7 action by the applicant school district. The commission shall not  
8 make its decision subject to any condition not directly related to  
9 such standards, and any condition or modification shall bear a  
10 direct and rational relationship to the reviewable building  
11 project.

12 (2) The commission shall issue a written decision on the  
13 application no later than forty-five days after the date the  
14 hearing was requested unless the applicant consents to an extension  
15 of time. The findings, conclusion, and decision resulting from the  
16 hearing shall constitute the determination of the commission and  
17 shall be included in the written decision.

18 (3) The applicant or any affected political subdivision  
19 which has intervened in the matter before the commission may appeal  
20 the decision of the commission, and the appeal shall be in  
21 accordance with the Administrative Procedure Act. Except as  
22 otherwise provided in section 11 of this act, the activities of the  
23 commission shall not otherwise be subject to the provisions of the  
24 Administrative Procedure Act.

25 Sec. 10. The commission may maintain an action against  
26 any school district undertaking a reviewable building project  
27 without having obtained approval of the commission pursuant to the  
28 Education Buildings Review Commission Act.



1           Sec. 11. The commission may adopt and promulgate rules  
2 and regulations to carry out the Education Buildings Review  
3 Commission Act.

4           Sec. 12. Section 77-3442, Revised Statutes Supplement,  
5 2004, is amended to read:

6           77-3442. (1) Property tax levies for the support of  
7 local governments for fiscal years beginning on or after July 1,  
8 1998, shall be limited to the amounts set forth in this section  
9 except as provided in section 77-3444.

10           (2) (a) Except as provided in subdivision (2) (b) of this  
11 section, school districts and multiple-district school systems may  
12 levy a maximum levy of (i) one dollar and five cents per one  
13 hundred dollars of taxable valuation of property subject to the  
14 levy for fiscal years 2003-04 through 2007-08 and (ii) one dollar  
15 per one hundred dollars of taxable valuation of property subject to  
16 the levy for all fiscal years except fiscal years 2003-04 through  
17 2007-08. Excluded from this limitation are amounts levied to pay  
18 for sums agreed to be paid by a school district to certificated  
19 employees in exchange for a voluntary termination of employment,  
20 ~~and~~ amounts levied to pay for special building funds and sinking  
21 funds established for projects commenced prior to April 1, 1996,  
22 for construction, expansion, or alteration of school district  
23 buildings, and up to fourteen cents per one hundred dollars of  
24 taxable valuation of property for any projects approved by the  
25 Education Buildings Review Commission. For purposes of this  
26 subsection, commenced means any action taken by the school board on  
27 the record which commits the board to expend district funds in  
28 planning, constructing, or carrying out the project.

1           (b) Federal aid school districts may exceed the maximum  
2 levy prescribed by subdivision (2)(a) of this section only to the  
3 extent necessary to qualify to receive federal aid pursuant to  
4 Title VIII of Public Law 103-382, as such title existed on  
5 September 1, 2001. For purposes of this subdivision, federal aid  
6 school district means any school district which receives ten  
7 percent or more of the revenue for its general fund budget from  
8 federal government sources pursuant to Title VIII of Public Law  
9 103-382, as such title existed on September 1, 2001.

10           (c) For school fiscal year 2002-03 through school fiscal  
11 year 2007-08, school districts and multiple-district school systems  
12 may, upon a three-fourths majority vote of the school board of the  
13 school district, the board of the unified system, or the school  
14 board of the high school district of the multiple-district school  
15 system that is not a unified system, exceed the maximum levy  
16 prescribed by subdivision (2)(a) of this section in an amount equal  
17 to the net difference between the amount of state aid that would  
18 have been provided under the Tax Equity and Educational  
19 Opportunities Support Act without the temporary aid adjustment  
20 factor and if subdivision (3) of section 79-1007.02 and subsections  
21 (2) and (5) of section 79-1008.01 had applied for the ensuing  
22 school fiscal year for the school district or multiple-district  
23 school system and the amount provided with the temporary aid  
24 adjustment factor and if subdivision (4) of section 79-1007.02 and  
25 subsections (3) and (6) of section 79-1008.01 had applied. The  
26 State Department of Education shall certify to the school districts  
27 and multiple-district school systems the amount by which the  
28 maximum levy may be exceeded for the next school fiscal year

1 pursuant to subdivision (2)(c) of this section on or before  
2 February 15 for school fiscal years 2004-05 through 2007-08.

3 (3) Community colleges may levy a maximum levy on each  
4 one hundred dollars of taxable property subject to the levy of  
5 seven cents for fiscal year 2000-01 and each fiscal year  
6 thereafter, plus amounts allowed under subsection (7) of section  
7 85-1536.01.

8 (4) Natural resources districts may levy a maximum levy  
9 of four and one-half cents per one hundred dollars of taxable  
10 valuation of property subject to the levy. Natural resources  
11 districts shall also have the power and authority to levy a tax  
12 equal to the dollar amount by which their restricted funds budgeted  
13 to administer and implement ground water management activities and  
14 integrated management activities under the Nebraska Ground Water  
15 Management and Protection Act exceed their restricted funds  
16 budgeted to administer and implement ground water management  
17 activities and integrated management activities for FY2003-04, not  
18 to exceed one cent on each one hundred dollars of taxable valuation  
19 annually on all of the taxable property within the district.

20 (5) Educational service units may levy a maximum levy of  
21 one and one-half cents per one hundred dollars of taxable valuation  
22 of property subject to the levy.

23 (6)(a) Incorporated cities and villages which are not  
24 within the boundaries of a municipal county may levy a maximum levy  
25 of forty-five cents per one hundred dollars of taxable valuation of  
26 property subject to the levy plus an additional five cents per one  
27 hundred dollars of taxable valuation to provide financing for the  
28 municipality's share of revenue required under an agreement or

1 agreements executed pursuant to the Interlocal Cooperation Act or  
2 the Joint Public Agency Act. The maximum levy shall include  
3 amounts levied to pay for sums to support a library pursuant to  
4 section 51-201, museum pursuant to section 51-501, visiting  
5 community nurse, home health nurse, or home health agency pursuant  
6 to section 71-1637, or statue, memorial, or monument pursuant to  
7 section 80-202.

8 (b) Incorporated cities and villages which are within the  
9 boundaries of a municipal county may levy a maximum levy of ninety  
10 cents per one hundred dollars of taxable valuation of property  
11 subject to the levy. The maximum levy shall include amounts paid  
12 to a municipal county for county services, amounts levied to pay  
13 for sums to support a library pursuant to section 51-201, a museum  
14 pursuant to section 51-501, a visiting community nurse, home health  
15 nurse, or home health agency pursuant to section 71-1637, or a  
16 statue, memorial, or monument pursuant to section 80-202.

17 (7) Sanitary and improvement districts which have been in  
18 existence for more than five years may levy a maximum levy of forty  
19 cents per one hundred dollars of taxable valuation of property  
20 subject to the levy, and sanitary and improvement districts which  
21 have been in existence for five years or less shall not have a  
22 maximum levy. Unconsolidated sanitary and improvement districts  
23 which have been in existence for more than five years and are  
24 located in a municipal county may levy a maximum of eighty-five  
25 cents per hundred dollars of taxable valuation of property subject  
26 to the levy.

27 (8) Counties may levy or authorize a maximum levy of  
28 fifty cents per one hundred dollars of taxable valuation of

1 property subject to the levy, except that five cents per one  
2 hundred dollars of taxable valuation of property subject to the  
3 levy may only be levied to provide financing for the county's share  
4 of revenue required under an agreement or agreements executed  
5 pursuant to the Interlocal Cooperation Act or the Joint Public  
6 Agency Act. The maximum levy shall include amounts levied to pay  
7 for sums to support a library pursuant to section 51-201 or museum  
8 pursuant to section 51-501. The county may allocate up to fifteen  
9 cents of its authority to other political subdivisions subject to  
10 allocation of property tax authority under subsection (1) of  
11 section 77-3443 and not specifically covered in this section to  
12 levy taxes as authorized by law which do not collectively exceed  
13 fifteen cents per one hundred dollars of taxable valuation on any  
14 parcel or item of taxable property. The county may allocate to one  
15 or more other political subdivisions subject to allocation of  
16 property tax authority by the county under subsection (1) of  
17 section 77-3443 some or all of the county's five cents per one  
18 hundred dollars of valuation authorized for support of an agreement  
19 or agreements to be levied by the political subdivision for the  
20 purpose of supporting that political subdivision's share of revenue  
21 required under an agreement or agreements executed pursuant to the  
22 Interlocal Cooperation Act or the Joint Public Agency Act. If an  
23 allocation by a county would cause another county to exceed its  
24 levy authority under this section, the second county may exceed the  
25 levy authority in order to levy the amount allocated.

26 (9) Municipal counties may levy or authorize a maximum  
27 levy of one dollar per one hundred dollars of taxable valuation of  
28 property subject to the levy. The municipal county may allocate

1 levy authority to any political subdivision or entity subject to  
2 allocation under section 77-3443.

3           (10) Property tax levies for judgments, except judgments  
4 or orders from the Commission of Industrial Relations, obtained  
5 against a political subdivision which require or obligate a  
6 political subdivision to pay such judgment, to the extent such  
7 judgment is not paid by liability insurance coverage of a political  
8 subdivision, for preexisting lease-purchase contracts approved  
9 prior to July 1, 1998, for bonded indebtedness approved according  
10 to law and secured by a levy on property, and for payments by a  
11 public airport to retire interest-free loans from the Department of  
12 Aeronautics in lieu of bonded indebtedness at a lower cost to the  
13 public airport are not included in the levy limits established by  
14 this section.

15           (11) The limitations on tax levies provided in this  
16 section are to include all other general or special levies provided  
17 by law. Notwithstanding other provisions of law, the only  
18 exceptions to the limits in this section are those provided by or  
19 authorized by sections 77-3442 to 77-3444.

20           (12) Tax levies in excess of the limitations in this  
21 section shall be considered unauthorized levies under section  
22 77-1606 unless approved under section 77-3444.

23           (13) For purposes of sections 77-3442 to 77-3444,  
24 political subdivision means a political subdivision of this state  
25 and a county agricultural society.

26           Sec. 13. Original section 77-3442, Revised Statutes  
27 Supplement, 2004, is repealed.